

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

**RASAQADEROJU RAHEEM**

v.

UNITED STATES OF AMERICA  
Respondent

On Petition for Writ of Certiorari from the  
United States Court of Appeals for the Fifth Circuit.  
Fifth Circuit Case No17-60397

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

Whether the Fifth Circuit erred by affirming Defendant's Raheem conviction.

## **PARTIES TO THE PROCEEDING**

All parties to this proceeding are named in the caption of the case.

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## I. OPINIONS BELOW

Defendant-Appellant Rasaq Aderoju Raheem (“Raheem”) was arrested on May 20, 2014. (ROA 605). On April 9, 2014, Appellant Raheem and other codefendants was named in an eight-count indictment which charged a violation of 18 U.S.C. § 1349, relative to conspiracy to commit mail fraud, wire fraud and bank fraud, a violation of 18 U.S.C. § 371 relative to conspiracy to commit identify theft, use of unauthorized access devices, and theft of government funds, and violation of 18 U.S.C. § 1341, relative to bank fraud. (ROA 609).

On July 8, 2014, Rasaq Aderoju Raheem and his codefendant were named in a nine-count superseding indictment. (ROA 612) Count 1 charged that beginning in at least 2001, and continuing until July 8, 2014, in Harrison County, in the Southern Division of the Southern District of Mississippi and elsewhere, the defendants did knowingly and willfully conspire with each other and with others, to violate the following sections of the United States Code:

a) Section 1341, Title 18, United States Code, that is, having devised and intended to devise a scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses and representations and promises, and for the purpose of executing and attempting to execute such scheme and artifice, knowingly and unlawfully caused to be delivered by the United States

Postal Service and private and interstate commercial carriers matters according to the directions thereon;

b) Section 1342, Title 18, United States Code, that is, having devised or intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses and representations, and promises, transmitted or caused to be transmitted in interstate and foreign commerce certain wire communications for the purpose of executing the scheme or artifice;

c) Section 1344, Title 18, United States Code, that is, to knowingly execute or attempt to execute a scheme and artifice to obtain funds under the custody and control of financial institutions by means of false and fraudulent pretenses and representations;

All in violation of Section 1349, Title 18, United States Code.

Count 2 charged that from on or about November 2001, and continuing until on or about July 8, 2014, in Harrison County, in the Southern Division of the Southern District of Mississippi and elsewhere, Rasaq Aderoju Raheem and his codefendant did knowingly and willfully conspire with each other, and with others, to commit offenses against the United States as follows:

a) Identify Theft as prohibited by Section 1028(a)(7), Title 18, United States Code, that is, the possession, transfer and use in or affecting interstate or foreign commerce, without lawful authority, the means of identification of another person with the intent to commit, or to aid or abet or in connection with unlawful activities that constitute violations of Federal law, or that constitute felonies under State or local law;

b) Use of unauthorized access devices as prohibited by section 1029(a)(3), Title 18, United States Code, that is, knowingly and with intent to defraud traffic in or use fifteen or more unauthorized access devices;

c) Use of unauthorized access devices as prohibited by Section 1029(a)(5), Title 18, United States Code, that is, knowingly and with intent to defraud effected transactions with one or more access devices issued to another person or persons to receive payment or other thing of value aggregating \$1,000 or more during any one-year period;

d) Theft of government funds as prohibited by Section 641, Title 18, United States Code, that is, to embezzle, steal, purloin and knowingly convert to their own use, or the use of another, in excess of \$1,000 in money or thing of value of the United States of America and the United States Postal Service, a department or agency of the United States of America.

All in violation of Section 371, Title 18, United States Code.

Counts 3 through 8 charged that beginning in at least 2001, and continuing until July 8, 2014, in Harrison County, in the Southern Division of the Southern District of Mississippi and elsewhere, Rasaq Aderoju Raheem and his codefendant, aided and abetted by each other, and with others, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses and representations, and for the purpose of executing and attempting to execute the scheme, knowingly and unlawfully caused to be delivered by the United States Postal Service and private and commercial interstate and foreign carriers matters according to the directions thereon, on or about the dates set forth below, by the United States Postal Service and Federal Express, to the persons/entities whose names and cities of residence are listed below, each constituting a separate count:

Count	Date	Description	Addressee
3	09/26/2011	2 BlackBerry Torch Smartphones	N.J., Biloxi, MS
4	12/14/2011	Commerce Bank Check for \$3,000	N.J., Biloxi, MS
5	04/06/2012	2 BlackBerry Torch Smartphones	J.B., Collins, MS
6	04/16/2012	2 BlackBerry Torch Smartphones Pretoria, South Africa	
7	10/29/2012	Capital One Bank Check for \$5,400	N.J., Biloxi, MS

All in violation of Sections 1341 and 2, Title 18, United States Code.

Count 9 charged that beginning in at least 2001, and continuing until at least July 8, 2014, in the Southern Division of the southern District of Mississippi and elsewhere, Rasaq Aderoju Raheem and codefendants did knowingly combine, conspire, and agree with each other, and with other persons, to commit offenses against the United States in violation of Title 18, United States Code, Section 1956, to wit:

a) To knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, bank fraud, wire fraud and mail fraud, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(I), all in violation of Sections 1956(h) and 2, Title 18, United States Code.

On October 7, 2014, Raheem and codefendants, were named in a nine-count second superseding indictment. Count 1 charged that beginning in at least 2001, and continuing until July 8, 2014, in Harrison County, in the Southern Division of the Southern District of Mississippi and elsewhere, the defendants did knowingly and willfully conspire with each other and with others, to violate the following sections of the United States Code:

a) Section 1341, Title 18, United States Code, that is, having devised and intended to devise a scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses and representations and promises, and for the purpose of executing and attempting to execute such scheme and artifice, knowingly and unlawfully caused to be delivered by the United States Postal Service and private and interstate commercial carriers matters according to the directions thereon;

b) Section 1342, Title 18, United States Code, that is, having devised or intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses and representations, and promises, transmitted or caused to be transmitted in interstate and foreign commerce certain wire communications for the purpose of executing the scheme or artifice;

c) Section 1344, Title 18, United States Code, that is, to knowingly execute or attempt to execute a scheme and artifice to obtain funds under the custody and control of financial institutions by means of false and fraudulent pretenses and representations; All in violation of Section 1349, Title 18, United States Code.

Count 2 charged that from on or about November 2001, and continuing until on or about October 7, 2014, in Harrison County, in the Southern Division of the Southern District of Mississippi and elsewhere, Raheem and codefendants did knowingly and willfully conspire with each other, and with others, to commit offenses against the United States as follows:

a) Identify Theft as prohibited by Section 1028(a)(7), Title 18, United States Code, that is, the possession, transfer and use in or affecting interstate or foreign commerce, without lawful authority, the means of identification of another person with the intent to commit, or to aid or abet or in connection with unlawful activities that constitute violations of Federal law, or that constitute felonies under State or local law;

b) Use of unauthorized access devices as prohibited by section 1029(a)(3), Title 18, United States Code, that is, knowingly and with intent to defraud traffic in or use fifteen or more unauthorized access devices;

c) Use of unauthorized access devices as prohibited by Section 1029(a)(5), Title 18, United States Code, that is, knowingly and with intent to defraud effected transactions with one or more access devices issued to another person or persons to receive payment or other thing of value aggregating \$1,000 or more during any one-year period;

d) Theft of government funds as prohibited by Section 641, Title 18, United States Code, that is, to embezzle, steal, purloin and knowingly convert to their own use, or the use of another, in excess of \$1,000 in money or thing of value of the United States of America and the United States Postal Service, a department or agency of the United States of America. All in violation of Section 371, Title 18, United States Code.

Counts 3 through 8 charged that beginning in at least 2001, and continuing until October 7, 2014, in Harrison County, in the Southern Division of the Southern District of Mississippi and elsewhere, Raheem and codefendants, aided and abetted by each other, and with others, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses and representations, and for the purpose of executing and attempting to execute the scheme, knowingly and unlawfully caused to be delivered by the United States Postal Service and private

and commercial interstate and foreign carriers matters according to the directions thereon, on or about the dates set forth below, by the United States Postal Service and Federal Express, to the persons/entities whose names and cities of residence are listed below, each constituting a separate count:

Count	Date	Description	Addressee
3	09/26/2011	BlackBerry Torch Smartphones	N.J., Biloxi, MS
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5	04/06/2012	BlackBerry Torch Smartphones	J.B. Collins, MS
6	04/16/2012	BlackBerry Smartphones	Pretoria, South Africa
7	10/29/2012	Capital One Bank Check -\$5,400	N.J., Biloxi, MS
8	09/09/2012	Regions Bank Check for \$3,550	C.B. Lucedale, MS

All in violation of Sections 1341 and 2, Title 18, United States Code.

Count 9 charged that beginning in at least 2001, and continuing until at least October 7, 2014, in the Southern Division of the Southern District of Mississippi and elsewhere, Raheem and codefendants did knowingly combine, conspire, and agree with each other, and with other persons, to commit offenses against the United States in violation of Title 18, United States Code, Section 1956, to wit:

a) To knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, bank fraud, wire fraud and mail fraud, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(I), all in violation of Sections 1956(h) and 2, Title 18, United States Code. (ROA 617)

The defendant was arrested in Pretoria, South Africa, on May 20, 2014. Raheem was extradited to the United States and on July 13, 2015, the defendant made an initial appearance in the Southern District of Mississippi and was ordered temporarily detained. (ROA 618) After a detention hearing on July 16, 2015, the defendant was ordered detained and he has remained in the custody of the U.S. Marshals Service since that date. (ROA 618) On February 7, 2017, the defendant was found guilty on Counts 1, 2, 3, 4, 7 and 9 of the second superseding indictment after a jury trial. (ROA 618) On January 24, 2017, during the trial in

this matter, the government dismissed Counts 5, 6 and 8 of the second superseding indictment. (ROA 618)

On May 24, 2017, the district court sentenced Mr. Raheem to serve 1,380 on all counts, multiple periods of supervised released on the various counts to run concurrently, and \$2,085,614.16 in restitution owed jointly and severally with Co-Defendants' and a \$600 special assessment.

Mr. Raheem filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on May 26, 2017. The Fifth Circuit case number is 17-60397.

On appeal, Mr. Raheem argued that the district court erred in the following areas:

1. Allowing the Government to enter emails on the basis they were self-authenticating in order to avoid the Defendant's constitutional right to confront his accusers at the trial in this matter;
2. Incorrectly calculating the loss amount;
3. Allowing Defendant Raheem to receive a leadership enhancement based on his role;
4. Sentencing Defendant Raheem to a sentence that was greater than necessary to effectuate the goals of 18 U.S.C. § 3553(a).

On March 4, 2019, the Fifth Circuit Court of Appeals entered its opinion affirming the conviction of the District Court. A certified copy of the Fifth Circuit's Order and its Judgment were entered on March 26, 2019.

## **II. JURISDICTIONAL STATEMENT**

The United States Court of Appeals for the Fifth Circuit filed both its Opinion in this case on March 4, 2019. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

## **III. CONSTITUTIONAL PROVISIONS INVOLVED**

This case involves the following provisions of the Constitution of the United States:

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment provides, in relevant part:

(Section 1) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Eighth Amendment to the United States Constitution provides:  
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### **IV. STATEMENT OF THE CASE**

##### **A. Basis for federal jurisdiction in the court of first instance.**

This case arises out of multiple criminal counts levied against Defendant Raheem, for Attempt and Conspiracy to Commit Mail Fraud, Conspiracy to Defraud the United States, Fraud and Money Laundering, in violation of Section 1341, Title 18, United States Code, and Title 18, United States Code, Section 1956. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charges levied against Defendant Raheem arose from the laws of the United States of America.

##### **B. Statement of material facts.**

The Department of Homeland Security Investigations (HSI) began investigating an organized engaged in online fraud and identity theft schemes. The investigation began after a complaint sent from a resident of Biloxi, Mississippi, to the Biloxi Police Department. The Biloxi victim stated that she had been corresponding with a person she knew as “John Garvin,” who she had met through an online dating site. “John Garvin” had recently asked the Biloxi victim to accept, repackage, and then reship a parcel containing suspicious cellular phones. HSI soon learned that the phones had been purchased using a stolen credit card number and that “John Garvin” was a fictitious persona used by Raheem.

## **V. ARGUMENTS**

### **A. Review on certiorari should be granted in this case.**

As stated in Rule 10 of the Supreme Court Rules, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons.” Petitioner requests this writ be granted for the following reasons:

### **B. Raheem’s Sentence Is Greater Than Necessary to Effectuate the Goals of 18 U.S.C. § 3553(a).**

The objectives of the Eighth Amendment cannot be squared with the imposition of a sentence of 1,380 on all counts. The statute governing

sentencing, “as modified by Booker, contains an overarching provision instructing district courts to ‘impose a sentence sufficient, but not greater than necessary’ to accomplish the goals of sentencing” in 18 U.S.C. § 3553(a)(2). *Kimbrough v. United States*, 552 U.S. 85, 101 (2007). Raheem’s sentence is greater than necessary to meet these goals and is therefore unreasonable.

The Guidelines sentence imposed by the district court is greater than necessary to meet § 3553(a)’s goals and is therefore unreasonable. To begin with, the 1,380-month sentence is greater than necessary to reflect the seriousness of Raheem’s white collar criminal offense. See 18 U.S.C. § 3553(a)(1) & (2)(A).

The 115-year sentence was greater than necessary to afford adequate deterrence and to protect the public. See 18 U.S.C. § 3553(a)(2)(B) & (C). Raheem had no prior criminal history and the Presentence Report did not show any prior arrest.

### **C. Whether the Confrontation Clause was violated**

At the trial, the Government sought and obtained a pretrial ruling to offer emails sent thru Gmail and yahoo as self-authenticating in order to avoid the Defendant’s constitutional right to confront his accusers at the trial in this matter. The Government argued to the trial court that the Government should not be required to call the records custodians due to the “considerable time and expense” of the

records custodians appearing at trial. The Government sought to have the codefendants of Raheem offer testimony, without Raheem having the benefit on cross-examination. The appellate court is to consider admission of evidence under an abuse-of-discretion standard.

Defendant objected to the admission of said emails arguing that Google and Yahoo did not create the records the Government sought to admit and further Google and Yahoo had no knowledge of the contents of the communications. (ROA 391) Defendant stated in his opposition to the records, “The ‘records’ in question here are the emails and chats stored on Google’s and Yahoo’s servers. No custodian from Google or Yahoo has any knowledge of the contents of those emails or chats. Nor did anyone from Google or Yahoo create those emails or chats. In other words, the emails and chats are not the business records of Google or Yahoo.”

The Confrontation Clause ensures that an accused has the right “to be confronted with the witnesses against him.” U.S. Const. amend. VI; see *Crawford v Washington*, 541 U.S. 42, 54 (2004). The Confrontation Clause “bars the introduction of testimonial evidence against a criminal defendant unless the proponent shows both that the declarant is unavailable and that the defendant had ‘a prior opportunity for cross-examination.’” *United States v. Ceballos*, 789 F.3d

607, 613-14 (5<sup>th</sup> Cir. 2015) (quoting Crawford, 541 U.S. at 68). Crawford held that “[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.” Crawford, 541 U.S. at 68-69.

## VI. CONCLUSION

For these reasons, Defendant Raheem prays for this Court to grant his Petition for Writ of Certiorari.

**Rasaq Aderoju Raheem**

Damon R. Stevenson

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**CERTIFICATE OF SERVICE**

I, Damon R. Stevenson, a member of the bar of this Court and appointed under the Criminal Justice Act, certify that today, June 2, 2019, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari was served on Counsel, addressed to:

Cleveland Gaines, Assistant United States Attorney  
Southern District of Mississippi  
1575 20<sup>th</sup> Avenue  
Gulfport, MS 39501

I further certify that all parties required to be served with this Petition and Motion have been served.

Damon R. Stevenson